IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 51 of 1994

DATE OF DECISION: 4.7.2007

The Commissioner of Income-tax, Jalandhar

…Applicant

Versus

M/s Khazan Singh & Bros., Jalandhar

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjeev Bansal, Advocate,
for the revenue.

JUDGMENT

M.M. KUMAR, J.

The revenue has approached this Court against the order dated 25.6.1993, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in I.T.A. No. 625(ASR)/1992, in respect of the assessment year 1982-83. The revenue has claimed that the following substantive question of law would arise for determination of this Court:-

> "Whether on the facts and in the circumstances of the case, the Ld. ITAT is right in law in computing the assessee's income at Rs. 55,000/- as against the income of Rs. 6,18,150/- estimated by the Income-tax Officer?"

Before adverting to the submissions made on the controversy raised, few facts are necessary to notice as flows from the statement of the case. The respondent-firm was engaged in the business of purchase and sale of auto spare parts in respect of the year under reference. It had headquarter at Jalandhar and Branch Office at Kapurthala. There were three partners, namely, Shri Gurbax Singh, father and his two sons Sarvshri Manjit Singh and Amrik Singh. On the inspection undertaken by the Excise and Taxation Department, Jalandhar, on 21.10.1982, a pocket diary was impounded and its possession was taken by the Income-tax Department by placing reliance on the provisions of Section 132A of the Act. In other words, the diary was requisitioned by the competent authority. The assessee filed its return on 7.4.1983, declaring its income at Rs. 14,240/- and best judgment under Section 144 of the Act was framed on 21.3.1985 at Rs. 4,97,180/-. The order of the Assessing Officer was set aside by the CIT (A), vide his order dated 25.11.1985 and accordingly *de novo* assessment was to be framed.

Thereafter fresh assessment was framed under Section 143(3) of the Act on 21.3.1985 and finally an addition of Rs. 5,65,300/- was made in the assessment on account of un-explained investment, which was based on the pocket diary requisitioned by the revenue under Section 132A of the Act. The Assessing Officer, vide his order dated 8.2.1991 (Annexure 'A'), invoked the provisions of Section 145(2) of the Act and the version of the assessee was rejected altogether. The CIT (A), vide its order dated 23.4.1992, upheld the assessment framed by the Assessing Officer and also his action of

invoking the provisions of Section 145(2) of the Act. Accordingly, addition of Rs. 5,65,300/- was confirmed.

On further appeal filed by the assessee, the matter was considered by the Tribunal and it took the view that the diary seized during inspection of the premises of the assessee could not constitute a basis for making addition of Rs. 5,65,300/-. The Tribunal in its order dated 25.06.1993 unequivocally condemned the approach adopted by the CIT (A) in para 6.1 and 6.2 in its order dated 23.4.1992. The Tribunal after quoting para 6.1 and 6.2 from the order of the CIT (A), held as under:-

> "16. In view of the above, the basic question would be as to what inference should be drawn on the given facts. As it is, the Assessing Officer and the CIT (A) have not appreciated the assessee's contention and the written submissions that entries were imaginary particularly the fact that neither any shoguns was taken nor there was any girl by the name of Dolly in whose marriage expenses were incurred. Further no plot had been purchased on which expenses could be incurred. Again the assessee had in terms stated and asserted that not only no "Deshi Sharab Theka" had been taken by the firm or any other partners but enquiries in this regard had been made by the Income-tax Department from the Excise Department also and not only there has been no contradiction but there is no reference to such submissions which shows that the assessee's version

could not be said to be wrong and frivolous. All these facts would project that it is a case where the assessee has been a victim of circumstances most of which may be resulting from his own action but certainly the firm should not have been visited with the type of assessment framed.

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18. Since we are of the considered view that entries in the diary could not be relied much less made the basis for making assessment in the assessee firm's case we are not dealing with the ground that expert assessment was not properly framed because Shri J.K. Sood, Advocate, submitted that in view of rounds of litigations through which the assessee has already gone he would pray for adjudication on merits rather than once again going back to the Assessing Officer."

In concluding para 22, the Tribunal categorically held that no addition was justified on the basis of entries in the impounded diary written in hand of one of the partners Shri Manjit Singh in the case of the firm and went on to add only a sum of Rs. 55,000/- as against the declared income by the assessee of Rs. 14,240/-.

Mr. Sanjeev Bansal, learned counsel for the revenue, has stressed that once a diary has been seized from the business premises of the assessee, which is found to be hand written by one of the

partner Shri Manjit Singh then it cannot be discarded on any ground whatsoever. According to the learned counsel in the absence of any plausible explanation furnished by the firm through its partner like Shri Manjit Singh, the Assessing Officer was fully competent to frame assessment on the basis of the entries made in the diary. Mr. Bansal has submitted that if any document is discarded in this fashion, it would result into huge loss to the revenue encouraging concealment of income by the dishonest assessee and, therefore, he has argued that the order passed by the CIT (A) should be kept intact and the order of the Tribunal should be set aside.

None has appeared for the assessee.

We have thoughtfully considered the submissions made by the learned counsel for the revenue and are of the view that this reference petition is liable to be returned unanswered because no question of law would arise for our determination. The Tribunal while analyzing the approach adopted by the CIT (A) has reached a conclusion that the Assessing Officer as well as the CIT (A) have failed to appreciate the contention advanced by the assessee that the entries made in the diary were imaginary, especially the fact that neither any shagun was taken nor there was any girl by the name of Dolly in whose marriage expenses were incurred. Further no plot was purchased on which expenses could be incurred. In respect of the entries in the diary 'Deshi Sharab Theka', the Tribunal has taken the view that the assessee or its partners had never taken such a liquor vend and the revenue was not able to connect the assessee with any

such activity after due verification from the Excise Department. Even the Fiat car bearing Registration No. PUL-7649 was not registered in the name of any of the partners. It was, in fact, registered in the name of one Mohinder Singh and, therefore, no addition on that account could have been made. It is on the basis of the aforementioned findings of fact recorded by the Tribunal that it was concluded that the entries were imaginary and no reliance could have been placed on such entries for the purposes of constituting a basis for recording an assessment order. Therefore, we are of the view that no question of law would arise as the order of the Tribunal is based on pure findings of fact. Accordingly, the question referred does not need to be answered and the reference is returned unanswered.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 4, 2007
Pkapoor